U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 16 2007

EAC 05 062 51265

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a "banking specialist." The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner asserted that the director failed to understand the significance of his past accomplishments, noted the number of Russian-speaking residents in the United States and claimed to have doubled the "financial turnover" of his own company in three months. The AAO upheld the director's decision, noting that the petitioner's company, created after the date of filing, could not serve as a basis of eligibility for this petition.

On motion, the petitioner now relies on his cultural knowledge and entry into the real estate business. For the reasons discussed below, we reaffirm our initial decision in this matter.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Master's in Business Administration (MBA) from the Ivane Javakhishvili State University of Tbilisi. The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has

established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Commr. 1998)[hereinafter "NYSDOT"], has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 218.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The director determined that the petitioner has worked in an area of intrinsic merit, economics and banking. The AAO did not withdraw that finding and we reaffirm that these fields have intrinsic merit. As noted by the AAO, however, the petitioner has not provided any information about Chelsea Group, Inc. Thus, the AAO could not determine whether the petitioner proposes to continue working in the same field. On motion, the petitioner now claims to be entering the real estate field as an agent affiliated with Century 21. While real estate has intrinsic merit, the petitioner cannot continue to make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998).

The director then concluded that the petitioner had not established that the proposed benefits of his work would be national in scope. On appeal, the petitioner responded that his ability to speak three languages was not limited to a local impact because there are approximately 5,000,000 Russian-speaking residents of the United States.

The AAO rejected the petitioner's language abilities as a valid basis for eligibility, noting the prevalence of those who can speak languages other than English worldwide. On motion, the petitioner asserts that he is not simply relying on his fluency in other languages, but also his knowledge of different cultural, ethnical and social backgrounds of those arriving from Eastern Europe.

The fact that the beneficiary happens to originate from Georgia and, thus, speaks Eastern European languages and is familiar with Eastern European culture, is not evidence that he has made or will make an impact on the field of economics other than to benefit his specific clients. While benefiting individual clients has intrinsic merit, the impact is not national in scope. If CIS were to accept that the beneficiary's multilingual ability and cultural knowledge warrants approval of the waiver, CIS would need to approve the waiver for every alien from a non-English speaking or culturally diverse country with a degree in a profession. The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all multilingual aliens who are familiar with their own cultural heritage. Certainly multilingual ability and the knowledge of one's own culture cannot convert services that are otherwise local into those considered national in scope. For example, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible. *NYSDOT,* 22 I&N Dec. at 217 n.3. This analysis would not change even if the pro bono attorney were multilingual and familiar with his own heritage.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Id.* at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." *Id.* at 221. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.*

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

Initially, the petitioner submitted documentation of his academic and professional credentials, including his Master of Business Administration degree from Tbilisi State University in the Republic of Georgia and real estate training certificates from Shorebank Advisory Services. The petitioner also submitted two reference letters from colleagues praising his abilities as a credit officer specifically and his professionalism in general. The letters do not suggest that the petitioner has influenced the banking industry as a whole.

The director issued a request for evidence on May 23, 2005, instructing the petitioner to submit additional evidence to meet the guidelines set forth in *NYSDOT,* 22 I&N Dec. at 217-218. In response, the petitioner stated that his innovations at the Bank of Georgia were appreciated by management and that he was promoted and paid a salary four to five times higher than the national average. The petitioner submitted evidence relating to his remuneration, training, and membership in professional associations. As noted in our previous decision, this evidence relates to the eligibility criteria for aliens of exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii), a classification that normally requires an alien employment certification. Section 203(b)(2) of the Act. We cannot conclude that meeting one criterion, or even the requisite three criteria, for that classification warrants a waiver of the alien employment certification process in the national interest. *See Employment-Based Immigrants,* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991); *NYSDOT,* 22 I&N Dec. at 217 n.3, 222.

The petitioner asserted that he had started Chelsea Group "for testing my theoretical ideas in economics." Documents in the record show that the petitioner incorporated Chelsea Group in June 2005, six months after he filed the petition in December 2004. The type of business is identified as "MANAGEMENT AND DESIGN."

The petitioner also relied on a job offer from [redacted] General Contractor, with the following duties: design of the company's expansion strategy taking into account new realities, improvement of the company's managerial style and finding new resources in an increasingly competitive business. In addition, [redacted], owner of [redacted] Design, "a construction company that does rehabilitation and renovation work in the Philadelphia area," states that the petitioner "has worked for me as a supervisor on several projects already, and I have found his ability to facilitate and coordinate workers and scheduling to be a great asset." [redacted] states that the petitioner's skills have led him to contemplate an expansion of his business that he would not otherwise have considered. Both of the above employers are building contractors, whereas the petitioner had previously indicated on the ETA 750B that he seeks employment in "management in food industry - banking specialist."

The petitioner stated that he is responsible for several innovations in economics, but he specified only one: "The last and most important innovations designed by me were a new approach and methodology for so called 'Business Games.'" He declined to provide any specifics, but asserted that "several independent tests showed considerable improvement of outcome." As noted by the AAO, the petitioner submitted no documentation of these "independent tests." He did, however, submit a letter from Professor [redacted] president of the Georgian Academy of Economical

Sciences, who states that the petitioner developed a "new approach for so called 'Business Games,'" which [redacted] characterized as a "replacement of [the] traditional scheme of [a] business team, consisting [of] four different kinds of managers (leader, critic, executive and ideologist), [by a] three-member team (opponent, proponent and customer)." Professor [redacted] asserts that the petitioner's "extraordinary ability and talents are critical to the field, and he has opened up an important area of business modeling."

On appeal, the petitioner stated that the director "ignored the Independent Expert opinion of Academician Prof. [redacted] . . Maybe the Agency is unaware [of] what it means to be [a] member of [the] Georgian Academy of Sciences." The petitioner submitted background information about the Georgian Academy of Sciences, and about the source of his "Independent Expert opinion." The AAO acknowledged that these materials establish [redacted] credentials (which the director had not questioned), but concluded that the material issue here was not Professor [redacted] standing in the field, but that of the petitioner.

The AAO further concluded that the petitioner had not independently established the importance of his contributions or demonstrated that U.S. businesses rely on "business games" to the same extent as Georgian companies. The AAO further concluded that [redacted] letter provided only conjecture too tenuous to form a reliable basis for a waiver. Finally, the AAO reiterated that the petitioner's employment prospects in the United States had been limited to management positions with construction contractors. In a footnote, the AAO questioned whether such positions require a bachelor's degree and, thus, can be considered professional positions pursuant to section 101(a)(32) of the Act and 8 C.F.R. § 204.5(k)(2).

On motion, the petitioner asserts that his company will create three to four jobs in "the nearest future" and 30 to 50 in five years. As evidence that he will meet these goals, he notes that he is licensed as a real estate agent and is affiliated with Century 21. He submits a 2005 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return listing $9,026 in wages and $17,223 in income from rental real estate, royalties, partnerships, S corporations, trusts, etc., but does not submit the Schedule E that would identify the source of this income.

The petitioner no longer relies on his achievements in the banking industry and we reaffirm our previous findings regarding the lack of evidence of the significance of these achievements. While the petitioner submitted a letter attesting to his influence, that letter, without additional support, is insufficient. More specifically, Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review. The record lacks evidence as to the extent to which others have adopted the petitioner's method of business modeling. For example, the petitioner has not submitted published articles by the petitioner in well-circulated economics journals or articles in the trade or general media commenting on the petitioner's methodology.

Regarding Chelsea Group, as stated in our previous decision, establishing one's own corporation does not cause one to be eligible for the waiver. More specifically, the inapplicability or unavailability of an alien employment certification for self-employed aliens cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5. As noted by the AAO, the petitioner has not demonstrated the type of services that Chelsea Group will provide or evidence that the petitioner has a past history of success in offering such services. The petitioner does not address this issue on motion.

Moreover, as also noted by the AAO, the company did not exist when the petitioner filed the petition. The petitioner filed the founding documents shortly after the director issued the request for evidence. A petitioner must establish his eligibility at the time of filing and may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner also fails to rebut this issue on motion.

The petitioner's job offers in the construction industry are equally unpersuasive. The 2005 offer from Dennis Haines does not, on its face, demonstrate eligibility for a national interest waiver. As noted by the AAO, there is no indication that the petitioner's work would have national impact, as opposed to simply advancing the interests of that one particular private company. The petitioner also fails to rebut this conclusion on motion. Thus, we reaffirm our conclusion that the petitioner cannot show that he merits a waiver of the job offer requirement by showing that he has a job offer.

Regarding the petitioner's current claim that he will create jobs through a real estate firm, we note that a separate classification exists for employment-creation aliens and requires an investment of at least $500,000 and the creation of 10 jobs within two years. Section 203(b)(5) of the Act; 8 U.S.C. § 1153(b)(5). Petitions filed under that classification must either establish that ten jobs have already been created or submit a comprehensive business plan. 8 C.F.R. § 204.6(j)(4). The petitioner is not seeking classification under that provision. Nevertheless, given the rigorous statutory and regulatory requirements that exist for employment-creation aliens, we cannot conclude that the petitioner's bare assumption that he will create jobs, supported by no evidence beyond the petitioner's license to

practice real estate and affiliation with Century 21, warrants a waiver of the alien employment certification in the national interest.

Finally, as with the petitioner's response to the director's request for additional evidence and appeal, the petitioner is once again altering his basis for eligibility. We emphasize again that the petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. at 175. The petitioner did not initially claim a past history of success in the real estate industry and has not demonstrated such a history on motion. Rather, he appears to be entering a new field in which he has no established track record. Such a claim cannot form the basis for a waiver of the alien employment certification requirement. *See generally NYSDOT*, 22 I&N Dec. at 219, n. 6.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

This decision is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The AAO's decision of September 11, 2006 is affirmed. The petition is denied.